

HOUSE No. 1010

By Mr. Mariano of Quincy, petition of Ronald Mariano relative to the use of credit-based insurance scoring for underwriting and rating of insurance. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATING TO THE USE OF CREDIT BASED INSURANCE SCORING FOR UNDERWRITING AND RATING INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2004 Official Edition, are
2 hereby amended by inserting after chapter 175J the following
3 chapter:—

4 **CHAPTER 175K.**

5 Section 1. The following words, as used in this chapter, unless the
6 context otherwise requires or a different meaning is specifically pre-
7 scribed, shall have the following meanings:

8 “Adverse Determination”, means a denial, cancellation, termina-
9 tion or non-renewal of insurance coverage, an increase in any charge
10 for insurance coverage, placement into a Page 2 lower tier, or any
11 other unfavorable change in the terms of coverage or amount of any
12 existing or applied for insurance.

13 “Affiliate”, means any company that controls, is controlled by, or
14 is under common control with another company.

15 “Applicant”, means an individual who has applied to be covered
16 by a personal lines insurance policy with an insurer.

17 “Consumer”, means an insured whose credit information is used
18 or whose insurance score is calculated in the underwriting or rating
19 of a personal lines insurance policy or an applicant for such a policy.

20 “Commissioner”, means the Commissioner of the Massachusetts
21 Division of Insurance, appointed pursuant to G.L. ch. 26, §. 6, or his
22 or her designee.

23 “Consumer Report”, means any written, oral or other communica-
24 tion of any information by a consumer reporting agency bearing on a
25 consumer’s credit worthiness, credit standing or credit capacity
26 which is used or expected to be used or collected in whole or in part
27 for the purpose of service as a factor in establishing the consumer’s
28 eligibility for (1) credit or insurance to be used primarily for per-
29 sonal, family, or household purposes, or (2) employment purposes,
30 or (3) other purposes authorized under section fifty-one of chapter
31 ninety-three of the Massachusetts General Laws. The term does not
32 include any report containing information solely as to transactions or
33 experiences between the consumer and the person making the report,
34 any authorization or approval of a specific extension of credit
35 directly or indirectly by the issuer of a credit card or similar device,
36 or any report in which a person who has been requested by a third
37 party to make a specific extension of credit directly or indirectly to a
38 consumer conveys his decision with respect to such request, if the
39 third party advises the consumer of the name and address of the
40 person to whom the request was made and such person makes the
41 disclosures to the consumer required under section sixty-two of
42 chapter ninety-three of the Massachusetts General Laws.

43 “Consumer Reporting Agency”, means any person who means
44 any person which, for monetary fees, dues, or on a cooperative non-
45 profit basis, regularly engages in whole or in part in the practice of
46 assembling or evaluating consumer credit information or other infor-
47 mation on consumers for the purpose of furnishing consumer reports
48 to third parties.

49 “Credit Information”, means any credit related information
50 whether obtained as a credit history, a credit report, a consumer
51 report, a credit score, an insurance score or any other compilation or
52 collection of a person’s credit.

53 “Credit Report”, means any written, oral, or other communica-
54 tions of information by a consumer reporting agency bearing on a
55 consumer’s credit worthiness, credit standing or credit capacity
56 which is used or expected to be used or collected in whole or in part
57 for the purpose of serving as a factor to determine personal lines
58 insurance premiums, eligibility for coverage, or tier placement.

59 “FCRA”, refers to the Fair Credit and Reporting Act, 15 U.S.C.S.
60 § 1681 et seq.

61 “Insurance Score”, means a numerical designation intended to
62 quantify the insurance risk a person presents by using such person’s
63 credit information in a formula designed to objectively rate insur-
64 ance risk of loss.

65 “Personal Lines Insurance”, means property/casualty insurance
66 coverage sold to individuals and families pursuant to chapter 174A
67 and chapter 175A of the General Laws.

68 “Rating Plan”, means a plan that establishes the base rates, classi-
69 fication factors, modifications to rates or factors and premium costs
70 of insurance coverage.

71 “Tier Placement Plan”, means the practice of placing a person
72 with a specific affiliate or subsidiary company based on the person’s
73 risk factors, or the practice of placing a person within a specific tier
74 within the same company.

75 Section 2. (1) Any insurer that used credit information, including
76 insurance scores, in its rating plan or tier placement plan shall file
77 with the Commissioner written standards governing the insurer’s use
78 of credit information. An insurer’s written standards shall:

79 (a) Indicate how credit information is relevant to the insurer’s
80 rating plan or tier placement plan. This requirement may be satisfied
81 by applying the insurer’s insurance scoring model to the insurer’s
82 past experience.

83 (b) Provide the circumstances under which credit information will
84 be requested on an applicant and/or policyholder, including a state-
85 ment that the decision to request credit information on an applicant
86 and/or policyholder shall not be based in whole or in part on race,
87 color, religious creed, sex, age, ancestry, sexual orientation, children,
88 veteran status, national origin, marital status, place or residency,
89 income, receipt of public assistance, blindness or any other physical
90 handicap or disability.

91 (c) Prohibit obtaining an insurance score for any arbitrary, capri-
92 cious, or unfairly discriminatory reason.

93 (d) Outline the use of credit information in an insurer’s rating plan
94 and/or tier placement plan.

95 (e) Illustrate that the insurer’s use of credit information in the
96 rating plan or tier placement plan will not result in rates that are
97 excessive, inadequate or unfairly discriminatory.

98 (2) An insurer shall not utilize credit information in its rating plan
99 or tier placement plan until such time as the insurer has filed the
100 written standards with the Commissioner pursuant to paragraph (1).

101 (3) An insurer shall utilize credit information in its rating plan or
102 tier placement plan in accordance with the insurer's written stan-
103 dards filed with the Commissioner pursuant to Paragraph (1).

104 Section 3. (1) An insurer that utilized credit information,
105 including insurance scores, in its rating plan or tier placement plan
106 shall not use such credit information as the sole basis for a decision
107 to deny, cancel, or non-renew any person's insurance coverage. (2)
108 An insurer that utilizes credit information, including insurance
109 scores, in its rating plan or tier placement plan shall not use such
110 credit information for any rating or tier placement decision without
111 also considering other applicable factor(s) independent of credit
112 information.

113 (3) An insurer shall not consider the following credit information
114 in the development of a rating plan or tier placement Plan:

115 (a) An applicant's or policyholder's unavailability of credit infor-
116 mation;

117 (b) Inquiries not initiated by the consumer and contained on a
118 consumer report;

119 (c) Collection accounts or delinquency reports identified with a
120 medical industry code;

121 (d) Credit information which has been adversely impacted by a
122 documented incident of identity fraud;

123 (4) An insurer that utilizes credit information, including insurance
124 scores, in its rating plan or tier placement plan shall treat all similar
125 credit lines or transactions similarly and may not distinguish
126 between similar credit lines or transactions based on such characteri-
127 zations as "conventional," "sub-prime," "personal finance," or other
128 characterizations based on a lender's primary marketing niche.

129 (5) An insurer that utilizes credit information, including insurance
130 scores, in its rating plan or tier placement plan shall consider mul-
131 tiple credit inquiries made by lenders within 30 days of one another
132 on the same subject matter as a single credit inquire.

133 (6) An insurer that utilizes credit information, including insurance
134 scores, in its rating plan for renewal business or tier placement plan
135 for renewal business shall update a policyholder's credit information
136 every three years or at the request of the policyholder, whichever is

137 sooner, and adjust any rate or tier placement decisions accordingly at
138 such time. All notice requirements under this regulation shall be
139 complied with each time credit information is utilized by the insurer.

140 Section 4. (1) (a) An insurer that utilized credit information,
141 including insurance scores, in its rating plan or tier placement plan
142 shall provide notice to an applicant or policyholder within 48 hours
143 of taking the application and in the same medium as application
144 information is received, and each time credit information is utilized
145 thereafter. Such notice shall:

146 i) Stating that the insurer will be requesting credit information on
147 the applicant or policyholder and explaining the significant charac-
148 teristics of credit information and how it will impact the applicant's
149 or policyholder's insurance.

150 ii) Informing the applicant or policyholder of his/her rights under
151 FCRA and G.L. ch. 93, § 50 et seq.; and

152 iii) Explaining that any premium quote given prior to receiving an
153 applicant's credit information is subject to change.

154 (b) An insurer may satisfy this notice requirement through a duly
155 licensed insurance producer, when applicable.

156 (2) An insurer that utilizes credit information, including insurance
157 scores, in its rating plan or tier placement plan shall annually provide
158 to the policyholder an educational brochure produced by the Massa-
159 chusetts Division of Insurance on the subject of credit information
160 and insurance.

161 (3) An insurer that utilizes credit information, including insurance
162 scores, in its rating plan or tier placement plan shall, upon making an
163 adverse determination based upon credit information, provide the
164 applicant or policyholder with:

165 (a) An explanation, which is reasonably understandable to the
166 applicant or policyholder; of the specific credit factor(s) that result in
167 the adverse determination. Standardized credit explanations pro-
168 vided by consumer reporting agencies or other third-party vendors
169 shall comply with this subsection;

170 (b) The identity, telephone number, and address of any consumer
171 reporting agency from which credit information was obtained; and

172 (c) Notice of the applicant's or policyholder's right to dispute any
173 incorrect or inaccurate information found on the consumer report,
174 and the procedure for doing so as set forth in the FCRA and G.L. ch.
175 93, §50 et seq.

176 (d) Use of one of the following example disclosure statements
177 constitutes compliance with this section:

178 (i) “In connection with this insurance, we may review your credit
179 report or obtain or use a credit-based insurance score based on infor-
180 mation contained in that report. An insurance score uses informa-
181 tion from your credit report to help predict how often you are likely
182 to file claims and how expensive those claims will be. Typical items
183 from a credit report that could affect a score include, but are not lim-
184 ited to, the following:— payment history, number of revolving
185 accounts, number of new accounts, the presence of collection
186 accounts, bankruptcies and foreclosures. The information used to
187 develop the insurance score comes from (insert name.)”; or

188 (ii) Use of the following example disclosure statement for
189 renewal business constitutes compliance with this section: “In con-
190 nection with this insurance, we previously used a credit report or
191 obtained or used a credit-based insurance score based on information
192 contained in that report. We may obtain or use credit information
193 again provided, however, that upon renewal such information may
194 only be used to reduce premiums. An insurance score uses informa-
195 tion from your credit report to help predict how often you are likely
196 to file claims and how expensive those claims will be. Typical items
197 from a credit report that could affect a score include, but are not lim-
198 ited to, the following: payment history, number of revolving
199 accounts, number of new accounts, the presence of collection
200 accounts, bankruptcies and foreclosures. The information used to
201 develop the insurance score comes from (insert name.)”.

202 (4) An insurer that utilizes credit information, including insurance
203 scores, in its rating plan or tier placement plan, upon receiving docu-
204 mentation that credit information has been disputed pursuant to the
205 FCRA and G.L. ch. 93, §50 et seq., from either the applicant or poli-
206 cyholder or from a consumer reporting agency, shall not use the dis-
207 puted information in any rating plan or tier placement plan until such
208 time as the disputed information is investigated and found to be cor-
209 rect and accurate, or investigated and corrected.

210 (5) If it is determined that an insurer used incorrect credit infor-
211 mation or documented disputed information, the insurer shall utilize
212 the correct information in its rating plan or tier placement plan and
213 make any necessary adjustments as to rate or placement effective as
214 of the date the incorrect or disputed credit information was used to

215 rate or place the applicant or policyholder. In no event shall the
216 insurer be required to make an adjustment beyond the current policy
217 term and the twelve months immediately preceding the current
218 policy term.

219 Section 5. An insurer that utilizes credit information including
220 insurance scores, in its rating plan or tier placement plan and that
221 makes a rate filing with the Division pursuant to Chapters 174A and
222 175A of the General Laws shall include in such filing the rating
223 factor and the credit information associated with the rating factor.

224 Section 6. (a) No consumer reporting agency shall provide or sell
225 data or lists that include any information that in whole or in part was
226 submitted in conjunction with an insurance inquiry about a con-
227 sumer's credit information or a request for a credit report or insur-
228 ance score. Such information includes, but is not limited to, the
229 expiration dates of an insurance policy or any other information that
230 may identify time periods during which a consumer's insurance may
231 expire and the terms and conditions of the consumer's insurance
232 coverage.

233 (b) The restrictions provided in subsection (a) of this section do
234 not apply to data or lists the consumer reporting agency supplies to
235 the insurance agent or broker from whom information was received,
236 the insurer on whose behalf such agent or broker acted, or sub insur-
237 er's affiliates or holding companies.

238 (c) Nothing in this section shall be construed to restrict any
239 insurer from being able to obtain a claims history report or a motor
240 vehicle report.

241 Section 7. An insurer shall indemnify, defend and hold agents
242 harmless from and against all liability, fees and costs arising out of
243 or relating to the actions, errors or omissions of the agent resulting
244 from obtaining or using credit information and/or insurance scores
245 for an insurer, provided the agent follows the instructions of or pro-
246 cedures established by the insurer, works within the authority
247 granted by the insurer to the agent and complies with any applicable
248 law or regulation. Nothing in this section shall be construed to pro-
249 vide a consumer or other insured with a cause of action that does not
250 exist in the absence of this section.

251 Section 8. If any provision of the chapter or the applicability
252 thereof to any person or entity or circumstance is held invalid by a
253 court, the remainder of this chapter or the applicability of such pro-

254 vision to other persons, entities or circumstances shall not be
255 affected thereby.

256 Section 9. Non-compliance with the provisions of this chapter
257 may result in the imposition of sanctions pursuant to section 17 of
258 chapter 174A and section 18 of chapter 175A, and any other applic-
259 able laws and regulations.